

1 Maureen E. McFadden, SBN 203781  
 2 LAW OFFICES OF MAUREEN E. MCFADDEN  
 3 819 Bancroft Way  
 4 Berkeley, CA 94710  
 5 Ph (510) 845-5203  
 6 Fax (510) 868-0976

7 Attorney for Plaintiff  
 8 MEGAN KELLY  
 9

10  
 11  
 12  
 13  
 14  
 15  
 16  
 17

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

18 MEGAN KELLY, ) Case No.: C-07-3002 MMC  
 19 Plaintiff, ) **REPLY BRIEF IN SUPPORT OF**  
 20 vs. ) **MOTION FOR LEAVE TO FILE**  
 21 APPLERA CORPORATION and DOES 1-20, ) **AMENDED COMPLAINT**  
 22 inclusive, ) Date: April 4, 2008  
 23 Defendants. ) Time: 9:00 a.m.  
 24 ) Courtroom 7, 19<sup>th</sup> Floor  
 25 ) The Honorable Maxine M. Chesney  
 26 )  
 27 )  
 28 )

**LEAVE TO FILE AN AMENDED COMPLAINT SHOULD BE GRANTED**

19 Applera's opposition brief suggests plaintiff's motion for leave to file a first amended  
 20 complaint violated this Court's scheduling order, and that therefore "good cause" must be  
 21 demonstrated. This is not accurate. The scheduling order did not contain a deadline for filing  
 22 amendments to the pleadings. The liberal federal policy favoring amendment of pleadings  
 23 [FRCP 15(a)], as set forth in plaintiff's moving papers, governs this motion.

24 Contrary to Applera's representations, plaintiff's request for leave to amend was quite  
 25 prompt. Plaintiff's complaint was filed in April 2008. Since that time, Applera engaged in  
 26 further conduct violative of its obligation to engage in the interactive process in good faith.  
 27 Plaintiff should be permitted to add these new allegations. Plaintiff also wishes to amend the  
 28 pleadings to reflect that Applera both regarding her as having a disability and had a record of her

1 having a disability, in conformance with discovery in the case to date. Finally, Applera engaged  
2 in new disability discrimination and retaliation against plaintiff from August 2007 – November  
3 2007. Plaintiff filed an amended charge of discrimination with the Department of Fair  
4 Employment and Housing that same month – November 2007 – and requested an immediate  
5 right to sue. Plaintiff cannot be blamed for the DFEH's failure to issue the requested right to sue  
6 letter until February 20, 2008, particularly given that the motion for leave to amend was filed  
7 within 10 days of receipt of the right to sue letter.

8 The new allegations are related to the original claims and allegations, and the interests of  
9 justice and the availability of judicial resources weigh in favor of having all plaintiff's claims  
10 heard at the same time. Based on the foregoing, plaintiff respectfully requests that the Court  
11 grant her motion for leave to amend, and amend the scheduling order to allow discovery on the  
12 new claims.

13 DATED: March 21, 2008

14 LAW OFFICES OF MAUREEN E. MCFADDEN

15 By:   
16 Maureen E. McFadden

17 Attorney for Plaintiff  
18 MEGAN KELLY

19  
20  
21  
22  
23  
24  
25  
26  
27  
28